1930, he has contributed a total of 56 editorials to the JOURNAL on a great variety of international law subjects,[6] in addition to an article or so, notes, and the like. It should also be recalled that of the thirteen draft conventions and comments prepared by the Harvard Research in International Law and published between 1929 and 1939 in the JOURNAL, he served as Reporter for three.[7] During this whole period, in addition to his own writing for the JOURNAL, Phil Jessup has been among the most valued members of the Board of Editors in reading and criticizing manuscripts submitted to the JOURNAL, insisting on high standards for publication, and at the same time lending every encouragement and helpful suggestions to those whose manuscripts were not ready for publication but for which there seemed some real hope that rewriting would make them publishable. His active collaboration in carrying on the JOURNAL will be sorely missed, but we look forward hopefully to having opportunities to publish articles by him from time to time as his duties may permit, as well as to taking note of his judicial activities. The JOURNAL'S loss is the gain to the Court, and thus to the worldwide cause of international law.

WM. W. BISHOP, JR.

"PIRACY" IN THE CARIBBEAN

It is difficult to avoid the humorous aspects of the *Santa María* case—difficult to take seriously a case of alleged piracy in which the pirate, Captain Galvão, had no black patch over his left eye, no wooden leg, no sword between misshapen teeth. It did not fit into the typical old-fashioned case of robbery on the high seas; the passengers of the ship were not called upon to walk the plank; they were not even despoiled of their jewelry; they were apparently well fed at mealtime, if any could eat with a pistol pointed at them. The "pirate king," if Galvão could be so described after the manner of the Pirates of Penzance, was sufficiently solicitous of the lives of the passengers, if only he could find a port in which to land them without himself being detained. The pirates of old were never that careful.

He said he was an insurgent, that his purpose was to overthrow the tyrant of Portugal, that he was acting on behalf of Salazar's chief rival, General Humberto Delgado, that he was taking the first step in a revolt against the dictator; that the Portuguese colony of Angola was awaiting

[6] In the January, 1961, issue we find an editorial by Jessup and Baxter on "The Contribution of Sir Hersch Lauterpacht to the Development of International Law," 55 A.J.I.L. 97; and one by Jessup on "The Law of the Sea Around Us," *ibid.* 104. It is interesting to note that 39 of Jessup's editorials appeared in the JOURNAL during his first thirteen years on the Board, before the press of wartime duties and other responsibilities cut down the amount of time that could be devoted to writing for our JOURNAL.

[7] The drafts referred to are those on "Competence of Courts in Regard to Foreign States," 26 A.J.I.L. Supp. 451–738 (1932); on "Rights and Duties of Neutral States in Naval and Aerial War," 33 A.J.I.L. Supp. 167–817 (1939); and on "Rights and Duties of States in Case of Aggression," 33 A.J.I.L. Supp. 819–909 (1939).

his arrival. Well, international law does recognize the status of insurgents, and perhaps a case could be made out for Galvão if, with a base of operations in the territory he was liberating, he had started his "National Independence Movement" by secreting his followers on a Portuguese warship and beginning his "revolution" in the dead of night, with a flag of his own. But on that technical point Galvão failed completely. His so-called revolution only became known after he had seized a private ship; and at that point violence was used against civilians who were not part of the armed forces of his enemy, and some of whom were nationals of third states.

The status of insurgency is not one to be conceded to any and every citizen who believes that the government of his country is tyrannical and should be overthrown. The practice of the United States in respecting the insurgent activities of representatives of the Latin American colonies in revolt against the mother country in the early decades of the 19th century was no doubt sympathetic. A "privateer," operating under a commission from the belligerent government at war with the mother country, would be recognized as having the right to capture private vessels of the mother country and would not be regarded by other countries as a pirate if confining its captures to vessels of the mother country. This attitude toward insurgents was later extended to insurgent groups seeking to overthrow the government of their country. But here third states have been more exacting in requiring something equivalent to a "status of insurgency"; and even then the alleged insurgents might not seize the property of the third state or inflict injury upon its nationals. On the other hand, the fact that the *de jure* government of the country against which the insurgents are in rebellion denounces them as pirates does not compel other states to regard them as pirates. The decision in the case of the *Ambrose Light,* holding that there must be some recognition of the insurgents as belligerents, and condemning a vessel duly commissioned by Colombian insurgents, was doubtless too severe.[1]

In the case of the *Santa María* the futility of the military effort might seem sufficient in itself to condemn the act. But query: Might not the justification of propaganda be offered to offset the fact that the vessel was unarmed and incapable of military action? All the world has now heard of the Portuguese dictator and his thirty years of dictatorship; all the world has now heard of Angola and the servitude in which the colony has been kept. That in itself might be the beginning of a revolution; that in itself might raise the hopes that are the stimulus of an insurgent movement. But here would come the question of the use of armed force in prosecution of a non-military objective; and here international law can offer no valid precedent. The law of insurgency applies to armed conflicts between the group in rebellion and the government against which it is rebelling; it cannot justify attacks upon civilian lives and property.

The case, then, is against Galvão, pirate or just plain criminal. He

[1] 25 Fed. 408 (1885).

used armed force to take over control of the *Santa María,* and in the course of the action a member of the crew, Third Officer Costa, was killed and another member of the crew, an apprentice pilot, was wounded. The Captain of the *Santa María* was put under arrest, and the crew terrorized. This was plain murder and criminal violence, for which the justification of insurgency was inadequate. It matters not that the act was begun on shore, by disguised entrance into the ship. It matters not that there was no further violence beyond changing the course of the ship and leaving the passengers in suspense as to their fate; it matters not that Galvão's followers were not *hostes humani generis,* as pirates are described; they killed and robbed on the high seas, under circumstances not justified by the law of insurgency.

What is to be said of the attitude of the Brazilian authorities when the vessel first sought a Brazilian port? One might suggest that they found it hard to believe that a gentleman pirate could be a pirate. It was only a few years before that the carnival in Brazil went wild over a song, *"Eu sou pirata"*—I am a pirate, with a glass eye, a wooden leg, and an ugly face—and all danced madly to the tune. How could President Quadros begin his term so meanly as to hang a pirate, and so nice a pirate at that? Fortunately the surrender of Galvão left the President an alternative; he could give Galvão and his men asylum. But how long could asylum last when Portugal would surely demand extradition of the man on grounds of murder and robbery? How far could the Latin American tradition of asylum be stretched to meet such a case? How could the offense be called "political" when Galvão had held no public office before starting his insurgent movement? Itamaraty has able lawyers on its staff; let us hope we shall get a *cause célèbre* out of it all. In the meantime every professor must welcome the case for classroom discussion; and but for the unhappy death of the Third Officer, Galvão might no doubt earn a fortune for his cause in Hollywood.

C. G. Fenwick

THE AMERICAN LAW INSTITUTE'S DRAFT RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES

During the first half of the decade 1950–60 there was considerable evidence that the legal profession in the United States was not, as a whole, sufficiently well informed about the law related to foreign affairs operations to be able to carry out the responsibilities of the profession as to leadership in public affairs and the growing needs of clients. The realization of deficiency in information and outlook motivated the Ford Foundation to support international legal studies programs in law schools; it was also a major factor in the development of the project reported on here. After earlier study, the American Law Institute decided in December, 1955, to experiment with the use of its "restatement of the law" technique, developed with respect to municipal and private law, in an area of public and transnational law.